IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4636 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHANDUBHAII GORDHANBHAI SONI

Versus

HEIRS OF SHABHAI BHATHIBHAI

Appearance:

MR AJ PATEL for Petitioners

MR UR GANDHI for Respondent No.1 (Not present)

MR JB PATEL for Respondent No.2 - Municipality

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 22/12/2000

CAV JUDGEMENT

#. The petitioners abovenamed have preferred this petition under Article 227 of the Constitution of India read with provisions contained in Bombay Tenancy &

Agricultural Lands Act, 1948 for appropriate writ, order or direction for quashing and setting aside the orders at Annexures-J and K recorded by the learned Deputy Collector (Land Reforms) in Tenancy Appeal No.85/85 on 10.9.1985 as well as by the learned Gujarat Revenue Tribunal in Revision Application No.TEN.BA.803/85 dated 10.9.1985.

#. Facts of the case are not in much dispute. The agricultural land Survey No.2224 admeasuring at Acres 3, 10 Gunthas situated in the sim of Anand in Kheda District is shown to be belonging to the present petitioners. They claim that an inquiry was made under section 70(b) of the Tenancy Act by the Mamlatdar and ALT, Anand at the instance of the deceased predecessor in title of the respondents. That the deceased had made the said application for declaration that he was the tenant of the entire land Survey No.2224. At the conclusion of the said inquiry, the Mamlatdar had passed an order on 18.1.1972 in Tenancy Case No.1804/32G holding that deceased predecessor of the respondents was a tenant in respect of the land admeasuring at Acre 1 - 05 Gunthas, out of the said Survey No.2224.

#. It is further contended that the deceased predecessor of the respondents was aggrieved by the said order and accordingly he had preferred an Appeal No.249/72 before the Deputy Collector unsuccessfully.

#. It is further contended by the petitioners that deceased predecessor was declared to be a tenant in respect of the land admeasuring at 18 Gunthas out of the said Survey No.2224. That during the course of pendency of the proceedings before the Mamlatdar, deceased predecessor of the respondents made a statement before the learned Mamlatdar on 24.1.1975 showing his inclination to purchase the land admeasuring at 18 Gunthas from Survey No.2224 in terms of the document at Annexure-B to the petition. That, on the basis of the said statement, learned Mamlatdar passed an order on 27.1.1975 on the basis that new tenancy was created in respect of the said land. The said order is placed on record at Annexure-C to the petition. That thereafter on 12.6.1982 an agreement was arrived at between the parties of the said litigation for the sale of the said land admeasuring at 2870 sq.feets out of Survey No.2224. The agreement is placed at Annexure-D to the petition.

#. That the predecessor in title of the respondents was aggrieved by the said order of the Deputy Collector, Anand, and therefore, revision application was filed

being Revision Application No.TEN.BA.443/82 before the Gujarat Revenue Tribunal. Annexure-E to the petition is the copy of the memo of the revision application submitted to the Tribunal. The petitioners have further contended that the predecessor Shri Vaghela had withdrawn the said revision application and the order was passed by the learned Tribunal on 6.7.1982 permitting the withdrawal and directing the disposal of the revision application is placed t the petition.

#. The petitioners have further contended that, even despite the aforesaid position, the predecessor in title of the respondents preferred Tenancy Case No.507/84 in respect of the said land before the Mamlatdar and ALT which was dismissed by the said authority on 2.1.1985 on the ground that since the deceased predecessor Shri Vaghela had already withdrawn his revision before the Tribunal, fresh round of litigation was impermissible. That the deceased had also preferred an appeal No.85/85 before the learned Deputy Collector who allowed the appeal and remanded the matter back to the Mamlatdar on 10.9.1985. Feeling aggrieved by the said judgment and order of the learned Deputy Collector, petitioners herein preferred revision application No.TEN.BA. 803/85 before the Gujarat Revenue Tribunal which dismissed the said revision application of the petitioners on 16.3.1992.

#. The petitioners have challenged the said judgment and order of the learned Gujarat Revenue Tribunal dated 16.3.1992 mainly on the ground that the proceedings had finally been set at reset when the deceased predecessor in title of the respondents withdrew his revision application before the learned Gujarat Revenue Tribunal referred to above. That when the revision application was withdrawn, subsequent proceedings could not be undertaken by any authority, and therefore, learned Mamlatdar and ALT was right in dismissing Tenancy Case No.507/84 on 2.1.1985 as aforesaid. That therefore the learned Deputy Collector and the learned Revenue Tribunal both have proceeded beyond the scope of their jurisdiction in entertaining the appeal and the revision respectively. That, therefore, orders passed by them are illegal and erroneous and deserve to be set aside.

#. The petitioners therefore pray that present petition be allowed and the judgments and orders recorded as aforesaid by the learned Deputy Collector and the learned Gujarat Revenue Tribunal be quashed and set aside.

#. On receiving the petition, Rule was issued and interim relief was granted till further orders. In

response to the service of Rule, M/s U.R.Gandhi and J.B.Patel had appeared on behalf of the respondents. Incidentally Mr.J.B.Patel has supported the plea of the petitioners. However, Mr.Gandhi learned advocate for the contesting respondent appears to be contesting the matter.

##. The matter was heard when M/s A.J.Patel and J.B.Patel were present and their arguments were heard. Thereafter the matter was adjourned from time to time with a view to provide an opportunity to Mr.Gandhi to argue the matter on behalf of the contesting respondents. Though the matter was adjourned from time to time and though the same was notified on daily board from time to time Mr.Gandhi did not turn up and therefore, I could not have the advantage of hearing the arguments of Mr.Gandhi for and on behalf of the contesting respondent. Therefore, I am required to depend upon the arguments advanced by M/s A.J.Patel and J.B.Patel.

##. Now things are not very much in dispute. It is an admitted position that the matter went from the authority to authority and ultimately the deceased predecessor in title of the respondents had preferred revision application before the learned Gujarat Revenue Tribunal being Revision Application No.TEN.BA No.448/83. The memo of the revision application is placed at Annexure-E at page 24 and there cannot be any dispute as to this aspect of the case.

##. Then Annexure-F at page 28 is the order of the learned Tribunal in the said revision application passed on 6.7.1982 which shows that the applicant (that is, predecessor in title of the respondents) in the revision application withdrew the revision application and hence revision application was dismissed as withdrawn.

##. This makes it clear that, this revision application filed by the predecessor in title of the respondents herein had voluntarily withdrawn the said revision application and thereby revision application was dismissed as withdrawn. Consequently, the order against which the said revision application was filed and the order which was under challenge before the learned Tribunal in the said revision application stood confirmed. Therefore, the said order could not be challenged before any other authority in any subsequent proceeding.

##. It, therefore, appears that learned Mamlatdar was right in dismissing Tenancy Case No.507/84 on 2.1.1985 on

the ground that predecessor of the respondents had withdrawn the revision application, and therefore, the said fresh Tenancy Case did not lie.

##. Learned Deputy Collector and the learned Revenue Tribunal have come to a decision that the said decision was taken by the learned Mamlatdar without hearing the predecessor of the respondents. It seems to be a fact that the predecessor of the respondents was not heard before dismissing the said Tenancy Case by the learned Mamlatdar.

##. At the same time, it is to be seen that learned Mamlatdar has based his decision on admitted position that the revision application of the predecessor of the respondents was dismissed as withdrawn, and therefore, fresh Tenancy Case could not and did not lie. Now that decision does not appear to be unjust, illegal, perverse or vulnerable. Nodoubt, the appellate authority would normally carry the powers to remand and the order of remand, sometimes is termed as a non-injurious order. However, when the said order is passed without any necessity then even such order cannot be upheld. It should be seen that the learned Mamlatdar had considered the fact that the predecessor of the respondents had withdrawn the revision application uncoditionally, and therefore, fresh Tenancy Case was not entertainable. This aspect of the case has been totally omitted from consideration or that the said aspect of the matter has been ignored or has not been properly taken into account by the learned Deputy Collector as well as by the learned Tribunal while remanding and confirming the order of remand respectively.

##. In above view of the matter, when the revision application was dismissed as withdrawn, the proceedings stood terminated, and therefore, no fresh Tenancy Case with respect to the same subject matter could be entertained by any revenue authority. If that Tenancy Case is allowed to proceed further and inquiry is required to be entertained, then entire process would be a matter of unnecessary exercise and wastage of time and energy.

##. Therefore, I am of the view that on withdrawal of the revision application, fresh Tenancy Case was not entertainable which has been made entertainable by an order of remand by the learned Deputy Collector. Therefore, learned Deputy Collector does not appear to be right in allowing the said appeal and in remanding the matter to the learned Mamlatdar. Therefore, the said

order appears to be illegal on the face of it. Learned Tribunal has also omitted to consider the said aspect, and therefore, the order of the learned Tribunal is equally bad in law.

##. In the aforesaid view of the matter, when the matter has been finally set at rest, it was unnecessary to have de novo trial through the orders of remand.

##. In my opinion, the order of the Deputy Collector as well as of the learned Tribunal in the aforesaid appeal and revision application respectively are illegal and erroneous. In that view of the matter, both these orders are required to be quashed and set aside.

##. Again at the cost of repetition, it may be stated that learned advocate for the contesting respondents did not appear before the Court for arguing the matter. Moreover, when the revision was finally set at rest, the petitioners herein have agreed to sale the said land to the second respondent which is Anand Municipality. Therefore, even the interest of respondent No.2 has been created in the subject matter of the dispute in the present petition, considering the change of circumstances also, this is not a fit case wherein the proceedings on remand should go ahead. This would be an additional consideration and ground for quashing and setting aside the orders referred to hereinabove. This shows that the present petition has substantial force of law and fact, therefore, deserves to be allowed.

##. In above view of the matter, the present petition is allowed. The judgment and order recorded by the learned Deputy Collector on 10.9.1985 in Tenancy Appeal No.85/85 and confirmed by the learned Gujarat Revenue Tribunal by judgment and order dated 16.3.1992 in Revision Application No.TEN.BA. 803/95 which are placed at Annexure-J and K are quashed and set aside and the order of the learned Mamlatdar and ALT dated 2.1.1985 in Tenancy Case No.507/84 is hereby restored. Rule is made absolute to the aforesaid extent. However, considering the facts and circumstances of the case, there shall be no order as to costs.

(D.P.Buch,J)

(pathan)